IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 206 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDBHAI NOORBHAI SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 206 of 2001

MS NITA C BANKER for Petitioner No. 1

MR BD DESAI A.P.P for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/01/2002

ORAL JUDGEMENT

1. The petitioner named above was original convict in Criminal case No.461/91 and there the learned Judicial Magistrate First Class, Bhavnagar had convicted the

petitioner on 27.2.1997 for the offences punishable under Sections 324, 504, 452 and 506 (ii) I.P.C. The learned Magistrate directed that the petitioner shall undergo R.I. for six months and shall be fined for Rs.100/- for the offence punishable under Section 324 I.P.C. The petitioner was further directed to suffer S.I. for five days, in case of non payment of amount of fine. For the offence punishable under Section 452 I.P.C. the learned Magistrate sentenced the petitioner to suffer R.I. for three months and he was also directed to pay fine of Rs.50/-. In default of payment of fine, the petitioner was directed to undergo further S.I. for three days. For the offence punishable under Section 506 (ii) I.P.C. the petitioner was sentenced to suffer six months R.I. He was directed to pay fine of Rs.100/-. In default of payment of fine, he was required to suffer further S.I. for five days. For the offence punishable under Section 504 I.P.C. the petitioner was directed to suffer R.I. for one month. He was required to pay fine of Rs.50/-. In default of payment of fine, he was required to undergo S.I. for three days. The substantive sentence was ordered to run concurrently and the petitioner was acquitted of an offence punishable under Section 135 of the Bombay Police Act.

2. The said matter was carried by the petitioner before the Sessions Court at Bhavnagar by way of Criminal Appeal No.5/97. After hearing the parties, the learned Sessions Judge, Bhavnagar, pronounced his judgment on 30/4/2001 dismissing the said appeal. Feeling aggrieved by the said judgments and orders of the two Courts below, the petitioner original accused has preferred this revision application before this Court under Section 397 read with Section 401 of Cr.P.C. 1973. It has been contended here that the two Courts below have not properly appreciated the evidence and that the appreciation is illegal and there was no material before the Courts below to arrive at the finding that the present petitioner has committed the said offence. Therefore, the judgements and orders are illegal and deserve to be set-aside. The petitioner has therefore, prayed to set-aside the said two judgments of the Courts below.

3. Rule was issued and Mr.B.D. Desai, learned A.P.P. appeared for the State.

4. I have heard the arguments advanced by Ms.Nita Banker for the petitioner and Mr.B.D. Desai, learned A.P.P. for the State.

5. At the beginning, it may be stated that the petitioner is alleged to have inflicted ice cutter on 14.9.90 at Bhavnagar on the person of the informant and one Sushilaben. Injuries were grievous. It is alleged that the petitioner voluntarily caused those injuries to those two witnesses. It is further stated that the said offence was committed in the said house of the informant. It is also alleged that the petitioner had given abuses and threats to the informant and had committed the aforesaid offences.

6. After the chargesheet was filed, trial was undertaken which resulted in conviction as aforesaid.

7. At the commencement of the argument Ms.Nita Banker learned advocate for the petitioner, states that the petitioner does not press this Revision Application on merits, but the request of the petitioner is for extending benefit of probation which may be considered in a proper perspective. It is also contended by her that during the course of the order dated 26.12.2001, the learned Judge of this Court has also made observations that this is a fit case wherein releasing of the petitioner convict on probation of good conduct should be considered. Therefore, the report of the Probation Officer was called for. The said report has been received and it has been kept on record. On going through the report of the Probation Officer at Bhavnagar dated 24.1.2002, it is apparent that the petitioner has no criminal background at his credit. The report also said that by and large the petitioner had good relations with his neighbours. It is also found that the petitioner has six children and the eldest is 30 years of age. It is also recorded that he has divorced his previous wife and is staying with the present wife. Looking to the antecedent of the petitioner recorded by the Probation Officers, it is found that the petitioner is not coming from criminal fraternity. It is also found that the offence was committed by him on account of some disputes between the petitioner and the informant.

8. Having regard to the facts and circumstances of the case, to the nature of the offence committed by the petitioner, to the age of the petitioner at relevant point of time, I am of the view that on overall consideration of the matter this is found to be a case fit for extending benefit of Probation. It is noted that the injuries suffered are not deep. It is also noted that the weapon used is ice cutter. These are the additional factors to be considered for extending the said benefit.

9. In above view of the matter, I am of the opinion that the benefit of Section 4 of the Probation of Offenders Act, 1988 should be extended to the present petitioner. On this point I have heard learned A.P.P. Mr.Desai and he states that in what manner the petitioner may be punished is a matter of discretion of the Court and Court may exercise the discretionary powers judiciously.

In above view of the matter, this Criminal Revision Application is partly allowed. The conviction of the petitioner for the offence punishable under Sections 324, 452, 504 and 506 (ii) I.P.C. is ordered to be confirmed. Even the sentence is also to be confirmed. Instead of immediately sentencing the petitioner to jail imprisonment, it is directed that the petitioner herein shall be released on probation of good conduct for a period of two years from the date of his furnishing solvent surety and P.R in a sum of Rs.2,000/- (Rs.Two thousand only), to appear and receive the sentence when called for during the said period. In the meantime, the petitioner shall keep peace and be of good behaviour for a period of two years. Rule is made absolute to that extent. The papers shall be sent to the Court concerned immediately with a view to enable the petitioner to submit the personal bond and surety as aforesaid. D.S. is permitted.

(D.P. Buch, J.)

/phalguni/